

Department of Energy

§ 1040.89-9

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal Investigation.* If Field Civil Rights Officers cannot resolve the complaint through informal inquiry, the Director, Office of Civil Rights and Diversity, will assign an Investigator to conduct a formal investigation of the complaint. If the investigation indicates a violation of the Act or these regulations, DOE will attempt to obtain voluntary compliance. If DOE cannot obtain voluntary compliance, it will begin enforcement as described in § 1040.89-10 and 10 CFR part 1040, subpart H, § 1040.111.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

§ 1040.89-8 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of DOE's investigation, conciliation, and enforcement process.

§ 1040.89-9 Compliance procedure.

(a) DOE may enforce the Act and these regulations through procedures prescribed in subpart H of DOE regulation 10 CFR part 1040—Nondiscrimination in Federally Assisted Programs or Activities, which calls for—

(1) Termination of a recipient's Federal financial assistance from DOE for a program activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before the Federal Energy Regulatory Commission (FERC). Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from DOE under this section.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obliga-

tions of the recipient created by the Act or these regulations, or under the terms of the Federal financial assistance.

(ii) Use of any requirement of, or referral to, any Federal, State, or local government agency that will have the effect of correcting a violation of the Act of these regulations.

(b) DOE will limit any termination under § 1040.89-9(a)(1) to the particular recipient and particular program or activity DOE finds in violation of these regulations. DOE will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from DOE.

(c) DOE will take no action under paragraph (a) until:

(1) The Director, Office of Civil Rights and Diversity, has advised the recipient of its failure to comply with the Act, these regulations, or the terms of the Federal financial assistance and has determined that voluntary compliance cannot be obtained.

(2) Thirty (30) days have elapsed after the Secretary or the Secretary's designee has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOE also may defer granting new Federal financial assistance to a recipient when a hearing under § 1040.89-10 is initiated.

(1) New Federal financial assistance from DOE includes all assistance for which DOE requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities during the deferral period. New Federal financial assistance from DOE does not include increases in funding as a result of changes, computation of formula awards, or assistance awarded prior to the beginning of a hearing under § 1040.89-10.

(2) DOE will not defer new assistance until the recipient has received a notice of an opportunity for a hearing under § 1040.89-10. DOE will not continue a deferral for more than 60 days